IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Income Tax Appeal NO. 15 of 1999

The Commissioner of Income-tax .... Appellant.

vs.

M/s. Rajkumar Dipchand Phade . .. ... . ... Respondents

Prem Vyas for Appellant
None for Respondents.

CORAM: **S. RADHAKRISHNAN**
**AND**
**A. S. AGUIAR JJ.**

Date: 13/6/2005

P,C,

1. Heard learned counsel for the Appellant. None appears for the Respondents though served.
2. By this appeal the appellant is seeking to raise the following substantial question of law:

> "Whether on the facts and circumstances of the case, the Tribunal was justified in law in holding

that since the assessment was framed under section 143(1) of the I.T. Act, the C.I.T. Was not justified in invoking the jurisdiction of under section 263 of the I.T. Act, even if the assessment was erroneous and prejudicial to the interests of the revenue?

2. Learned counsel for the applicant - Revenue brought to our notice that the Division Bench of this court in Income Tax Appeal Nos. 13 and 18 of 199 decided on March 30,2001 while dealing with the same substantial question of law has decided in favour of the Revenue and answered the question in the negative.
3. We have also perused the decision reported in **(2000) 243 ITR 83 (SC) (Malabar Industrial Co. Ltd. V. CIT),** wherein the supreme court has laid down two pre-requisites for exercise of jurisdiction by the Commissioner *suo motu* viz., that the order of the Assessing Officer was erroneous and, secondly , that the order of the Assessing Officer was prejudicial to the interests of the Revenue. Relying upon the said judgment this court found that there was no power to the Commissioner to invoke section 263 of the Income-tax

Act.

4. In the present matter the assessee has claimed deduction in respect of interest amounting to 52,500/- towards the goodwill. The amount was payable to the incoming partner and therefore no amount was payable by the firm and as such no claim for deduction in respect of the said amount was made. The order of the Assessing Officer is ex- facie erroneous as the aforesaid facts have not been properly examined. Hence the order is prejudicial to the Revenue. Under the above circumstances the question is answered in negative in favour of the Revenue and against he assessee. Appeal is accordingly allowed with costs.

**S. RADHAKRISHNAN J.**

**A. S. AGUIAR J.**